

Nalco Docket No. 7701
Customer Number: 49459

REMARKS

Reconsideration in view of the following remarks is respectfully requested. Applicants have reviewed the Office Action mailed on December 19, 2008 ("Office Action") and respectfully assert that this paper is responsive to all points raised therein.

The Examiner maintained the rejection from the previous Office Action mailed on June 18, 2008, of Claims 1 to 10 and 12 to 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,762,832 B2 to Fisher et al. ("Fisher") in view of U.S. Patent No. 5,278,074 to Rao et al. ("Rao") and U.S. Patent No. 5,922,606 to Jenkins et al. ("Jenkins") and U.S. Patent No. 6,436,711 B1 to Davis et al. ("Davis").

With their response to the above-mentioned previous Office Action, Applicants submitted a Declaration under 37 C.F.R. § 1.131, signed by inventors Brian V. Jenkins and John E. Hoots, which showed completion of the claimed invention prior to the August 20, 2002, Effective Date of Davis.

The Examiner stated in the instant Office Action that the Declaration was insufficient to overcome Davis. Specifically, the Examiner stated, "The scope of the declaration or affidavit is not commensurate with the scope of the claim(s). The Declaration does not establish use of a xenon flashlamp in a fluorometer prior to the effective date of Davis et al."

Applicants submit herewith another Declaration under 37 C.F.R. 1.131 that establishes specifically the use of a xenon flashlamp with respect to the instant claims. In particular, Exhibit A to the Declaration is an email string having John D. Hoots ("John" in the email string) as the signatory that definitively establishes use of a xenon flashlamp (represented as "TRASAR Xe-2 Controller") prior to August 20, 2002. Moreover, Exhibit B is an action items list from a meeting that took place with respect to the instantly claimed invention. Exhibit B clearly shows testing of a xenon flashlamp (shown as "Xe-2") prior to August 20, 2002.

Accordingly, in view of the foregoing and the enclosed Declaration, Applicants respectfully request withdrawal of the rejection of Claims 1 to 10 and 12 to 22 under 35 U.S.C. 103(a).

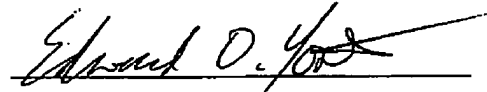
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CONCLUSION

In view of the foregoing remarks, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103(a). Applicants respectfully assert that all pending claims in this Application are in condition for allowance. Should the Examiner have any questions or comments as to form, content, or entry of this paper, or if any further issues yet to be resolved to advance prosecution of this Application to issue, the Examiner is requested to telephone the undersigned counsel.

Entry of this paper and allowance of all pending Claims 1 to 10 and 12 to 22 is respectfully requested. Applicants earnestly solicit early notice to this effect.

Respectfully Submitted,



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Date: May 7, 2009